RECENT CASES.

AUTHORITY OF TEACHER — CORPORAL PUNISHMENT. — In a criminal prosecution against a teacher for assault and battery in chastising a pupil it was *held*, that within the limits of his jurisdiction and responsibility a teacher may punish a pupil, not cruelly or excessively, but in proportion to the gravity of the offence, and within the bounds of moderation, and in a kind and reasonable spirit. There is a presumption that the teacher properly punished the pupil, and the burden is on the latter to show the contrary. — *Vanvactor* v. *State*, 15 N. E. Rep. 341 (Ind.).

BANKS AND BANKING — INSOLVENCY — DISCOUNTS AND COLLECTIONS — TRUST FUND. — A New York bank was accustomed to discount notes for a Houston bank, and on maturity forward them to the Houston bank for collection and returns, with an understanding that the proceeds of such discounted notes should be preserved by the Houston bank as the property of the New York bank, and be returned to it as such. Such notes, amounting to $5,000 having been collected by the Houston Bank, the proceeds were credited to the New York bank, and then mingled with its own funds. On the subsequent insolvency of the Houston bank, *held*, that the New York bank was entitled to payment of this amount in priority to other creditors. The understanding between the banks prevented the ordinary relation of debtor and creditor from existing between them after the collection, and gave the proceeds the character of a trust fund, which was not divested by being mingled with the other moneys of the collecting bank. If "throughout all the trustee's dealings with the funds so mingled together, he keeps on hand a sufficient sum to cover the amount of the trust money, . . . the trust should attach to the balance that is found to remain in his hands." *Continental Nat. Bank of N. Y.* v. *Weems*, 6 S. W. Rep. 802 (Tex.).

COMMON CARRIER — LIMITATION OF LIABILITY. — Action against an Express Co. for negligently delaying shipment of goods. The written contract for shipment contained a clause that "the said Pacific Express Co. shall not be held liable for any claim of whatsoever nature arising from this contract, unless such claim shall be presented in writing within sixty days from the date hereof." The claim was not presented within the time required. *Held*, that the plaintiff's right of recovery for delay in shipment was not barred by the clause in question. Limitations put by a common carrier upon its liability are valid only when reasonable. This limitation is unreasonable. *Pacific Exp. Co.* v. *Darnell*, 6 S. W. Rep. 765 (Tex.). A note collects cases.

COMMON CARRIERS — TRANSPORTATION COMPANIES — LIMITATION OF LIABILITY. — The plaintiff delivered goods for shipment to the Merchants' Despatch Transportation Company, under a bill of lading which reserved to the company the right to select the particular line of railroads over which the goods should be sent, and stipulated that in case of loss the railroad in whose actual custody the goods should be at the time of the loss should alone be liable therefor. *Held*, that this stipulation did not relieve the company from liability for loss of the goods. The right of selection of lines reserved to the company made the railroads its agents, and the company, being a common carrier, could not lawfully contract against the consequences of the negligence of its agents. Adjudged cases have already applied this principle to express companies. The doctrine does not depend upon the fact that the messengers of express companies accompany the freight, but is equally applicable to the case of despatch companies. *Block* v. *Merchants' Despatch Transp. Co.*, 6 S. W. Rep. 881 (Tenn.).

CONSTITUTIONAL LAW — CONFINEMENT FOR DRUNKENNESS. — An Act providing that any person charged with being an inebriate, habitual or common drunkard, may be arrested and brought before a judge of a court of record for trial, and if convicted, sentenced to confinement in any inebriate or insane asylum, is in violation of Const. U. S. Amend. art. 14, §1, which declares that no State shall "deprive any person of . . . liberty . . . without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." *State* v. *Ryan*, 36 N. W. Rep. 823 (Wis.).

CONSTITUTIONAL LAW — INTERSTATE COMMERCE. — A statute of Indiana required every sleeping-car company incorporated under the laws of another State, and doing any business in Indiana, to pay a certain tax, based upon the proportional part of the gross receipts due to the business done within the State. *Held*, unconstitutional, because a tax upon interstate commerce. *State* v. *Woodruff, S. & P. Coach Co.*, 15 N. E. Rep. 814 (Ind.).

The late decisions of the U. S. Supreme Court are referred to as carrying the power of the United States over interstate commerce to the fullest extent, even to annulling the police power of the States where interstate commerce is concerned. See *Robbins* v. *Taxing Dist.*, 120 U. S. 489, digested in 1 HARV. L. REV. 108.

CONSTITUTIONAL LAW — INTOXICATING LIQUORS — REGULATION OF COMMERCE. — An Iowa statute forbidding any common carrier to bring within the State any intoxicating liquors from any other State or Territory without first being furnished with a certificate from the auditor of the county to which such liquor is to be transported, certifying that the consignee is a person authorized to sell intoxicating liquors, is an unconstitutional regulation of interstate commerce. Waite, C. J., Gray and Harlan, JJ., dissenting. *Bowman* v. *Chicago & N. W. Ry. Co.*, 8 Sup. Ct. Rep. 689.

CONSTITUTIONAL LAW — PROHIBITORY LIQUOR LAW. — A statute which provides that no person shall manufacture, or keep on his premises, any intoxicating liquors for the purpose of sale, is not rendered void as an unconstitutional regulation of interstate commerce, because the prohibition would cover the case of liquor kept for the purpose of sale without the State. *State* v. *Fitzpatrick*, 37 Alb. L. Jour. 290 (R. I.).

CONTRACT — RIGHT OF BENEFICIARY TO SUE. — Where a contract is entered into for the benefit of the third party, he can sue the promisor in his own name. *Hostetter* v. *Hollinger*, 12 Atl. Rep. 741 (Pa.).

But where the promise is made for the benefit of the promisee, *e. g.*, a promise to pay the debt of another, in which case the promise is for the benefit of the debtor, the third party cannot sue. *Austin* v. *Seligman*, 18 Fed. Rep. 519.

COPYRIGHT — EXTRACTS FROM BOOK. — Defendant published a pamphlet which contained about one hundred short extracts taken from complainant's book. Bill for injunction. *Held*, that if extracts had been scattered through defendant's book, so that it would be impossible to separate them from the original matter, it would be proper to apply the doctrine of confusion of goods, and enjoin the whole book; but as three-fourths of the extracts from complainant's book — and practically all to which he could lay claim as original matter — were contained in the first chapter, being the first eleven pages of the pamphlet, the injunction should extend only to this portion of the publication. *Farmer* v. *Elstner*, 33 Fed. Rep. 494 (Mich.).

DEED — FRAUD IN OBTAINING DELIVERY — BONA FIDE PURCHASERS. — Where the grantor of land executed a deed, and before payment of the purchase-money placed the deed in the grantee's possession, upon the fraudulent representation that he wanted it to copy field-notes of the land, *held*, that this did not operate as a delivery of the deed, and passed no title, and that one who, without knowledge, subsequently took a deed from the grantee for a valuable consideration, could not be held a purchaser for value as against the original grantor. *Steffian* v. *Milmo Nat. Bank*, 6 S. W. Rep. 823 (Tex.).

This would seem to be a suitable case for the application of the doctrine of estoppel; the numerous authorities cited by the Court scarcely bear out their proposition; many of them are cases of deeds given in escrow.

DEED — MISTAKE IN DESCRIPTION — PAROL EVIDENCE TO EXPLAIN. — In an action of trespass to try title between the respective grantees of R and S, the two parties to a deed, *held*, that evidence was inadmissible to show that the descriptive words in the deed were improperly used, and that other land than that described was intended to have been conveyed. Such evidence would have been admissible had the controversy been between R and S; but "vendees of S, in the absence of knowledge that a mistake in the description of the land intended to be conveyed by R to S had been made in the deed, if a mistake in this respect occurred, were entitled to rely on the description contained in the deed." *Farley* v. *Deslande*, 6 S. W. Rep. 786 (Tex.).

DURESS — EQUITABLE. — The plaintiff's son, about to abscond, executed to his father a conveyance of property to secure liabilities incurred on his account. One of the defendants, W, a justice of the peace, was employed to make the transfers. Soon after the son absconded the defendants obtained a bond and mortgage from the plaintiff to secure them from loss as creditors of the son. It appeared that the bond and mortgage were obtained by exciting the fears of the plaintiff, who was a farmer over 70 years old, in distressed circumstances, through the representations of W that, unless the plaintiff secured the defendants, the transfers by the son to him would be set aside as fraudulent. *Held*, that the bond and mortgage were void because of undue influence. The relation between W and the plaintiff — that of confidential adviser to effect the transfers — required W to act in good faith, without using the information obtained through that relationship to the disadvantage of his employer. "This principle holds good wherever fiduciary relations exist, and there has been a confidence reposed which invests the person trusted with an advantage in dealing with the person so confiding." *Fisher* v. *Bishop*, 15 N. E. Rep. 831 (N. Y.).

ESTOPPEL — JUDGMENT. — Defendant held certain notes against plaintiff. They entered into an executory agreement for a compromise, whereby less than the face value of the notes was to be accepted by the defendant. Before this agreement was carried out defendant brought suit on the notes, and plaintiff defaulted. Plaintiff now sues on the agreement. *Held*, that the judgment on the notes is no bar to this action. Where a defence constitutes cause of action it need not be set up as a defence. *Hunt* v. *Brown*, 15 N. E. Rep. 587 (Mass.).

EVIDENCE — CHARACTER. — In an action on a note, where the defence was that the note was given for intoxicating liquors sold to the defendant, at a time when plaintiff knew that the defendant was a person of intemperate habits (such sale by law of Alabama being illegal), it was *held*, that evidence of the general reputation of the defendant was inadmissible to prove that he was a man of intemperate habits, though admissible to show the plaintiff's knowledge of that fact. *Collins* v. *Jones*, 3 So. Rep. 591 (Ala.).

EVIDENCE — CRIMINAL LAW — ADMISSIBILITY OF FORMER CRIMES TO SHOW MOTIVE. — The defendant was indicted for bribing a New York alderman to grant a franchise to the Broadway Surface Railway. *Held*, that evidence that the defendant had the year previously attempted to bribe the clerk of the New York Assembly to alter a bill then pending before the Assembly, so that its terms would authorize the building of a surface railway on Broadway, was inadmissible to show motive in the defendant. This is merely character evidence, too remote and too dangerous. *People* v. *Sharp*, 10 Crim. Law Mag. 200 (N. Y.).

This is an extreme case. "Another act of fraud is admissible to prove the fraud charged only where there is evidence that the two are parts of one scheme or plan of fraud, committed in pursuance of a common purpose." *Jordan* v. *Osgood*, 109 Mass. 457. The principle that on trial for one crime evidence of another crime is admissible to show motive when the two are parts of one plan, actuated by a common purpose, has been approved in the recent Mass. case of *Com.* v. *Robinson*, not yet reported. The two crimes in *People* v. *Sharp* were part of one scheme, committed in pursuance of a common purpose, — the getting a Broadway surface railroad. The first attempt went directly to show the existence of this motive in Sharp's mind, and the strength of that motive. *Shaffner* v. *Com.*, 72 Pa. St., limiting this doctrine to cases where, previously to the first crime, the two crimes were contemplated in the defendant's mind as parts of the same plan or transaction, has been virtually overruled by *Goersen* v. *Com.*, 99 Pa. St. 388; s. c. 106 Pa. St. 477.

EVIDENCE — "EDMUNDS LAW" — COHABITATION WITH LEGAL WIFE. — In a trial under the "Edmunds Law," which provides "that if any male person cohabits with more than one woman, he shall be guilty of misdemeanor," the defendant denied cohabitation with his legal wife, A, but confessed cohabitation with B. *Held*, it is a conclusive presumption that a husband cohabits with his legal wife if he contributes towards her support and lives within her vicinity. *U. S.* v. *Harris*, 17 Pac. R. 75 (Utah).

EVIDENCE — FRESH COMPLAINT. — In a prosecution for rape, the defendant, on cross-examination, can ask the prosecutrix to give the particulars of the fresh complaint; and when this is done to impeach the testimony of the prosecutrix, the State can introduce evidence to corroborate her testimony. *Barnett* v. *State*, 3 So. Rep. 612 (Ala.).

EVIDENCE — STATUTE — PRIMA FACIE EVIDENCE. — Under Public Laws of Maine, 1887, ch. 140, providing that the paymant of the United States special liquor tax shall be *prima facie* evidence that the person paying the same is a common seller of intoxicating liquors, it is error to instruct the jury that they must find a person guilty upon proof of such fact alone. Per Walton, J.: "*Prima facie* here means only 'presumptive;' otherwise, the statute would be unconstitutional. The very essence of 'trial by jury' is the right of each juror to weigh the evidence for himself, and in the exercise of his own reasoning faculties determine whether or not the facts involved in the issue are proved." *State* v. *Liquors and Vessels*, 12 Atl. Rep. 794 (Me.).

EVIDENCE — VALIDITY OF DEED — MENTAL CAPACITY OF GRANTOR. — In an action to set aside a deed on account of the grantor's mental incapacity, *held*, that the unnatural disposition made of the estate is competent evidence as to such incapacity. *Bressey's Adm'r* v. *Gross*, 7 S. W. Rep. 150 (Ky.).

HIGHWAY — DEDICATION — ESTOPPEL BY NON-ACCEPTANCE. — In a sale of land the recitals in the deed and an agreement between the parties constituted a dedication of an adjacent strip of the grantor's land as a public street. The strip was enclosed by fences and occupied by buildings, and so remained. In a suit by the city, at the end of ten years, to have it declared a street, it was *held*, that there never having been any act on the part of the city recognizing or accepting such dedication, the city acquired no right to claim the property in controversy for the purposes of a street. *City of Galveston* v. *Williams*, 6 S. W. Rep. 860 (Tex.).

Compare *Crocket* v. *City of Boston*, 5 Cush. 182, which holds that an offer of dedication is presumed to remain open a reasonable time, and that acceptance within a year and four months is acceptance within a reasonable time.

HUSBAND AND WIFE — LIABILITY OF THE FORMER FOR THE DEBTS OF THE LATTER. — Money paid by the husband as executor of his wife's estate for her funeral expenses and monument is chargeable against her estate; but a physician's bill for attending the wife during her last illness is a personal debt of the husband. *Moulton* v. *Smith*, 17 Atl. Rep. 891 (R. I.).

HUSBAND AND WIFE — PARTNERSHIP — SEPARATE ESTATE. — An Arkansas statute constitutes all property owned by a woman before marriage or acquired after marriage, her separate property, which she may sell or assign; she may carry on any business and perform any services on her sole and separate account; she alone may be sued therefor, and her separate property subjected to execution. In a Mississippi case involving this statute it was *held*, there being no Arkansas decision on the point, that under this statute a wife can form a valid contract of partnership with her husband. *Toof* v. *Brewer*, 3 So. Rep. 571 (Miss.).

The opposite result has been reached in several States having similar statutes. The case reviews the opposing decisions.

INFANCY — NEGLIGENCE — PRESUMPTION OF INCAPACITY. — In an action to recover damages for injuries to an infant between seven and eight years of age, a plea setting up the contributory negligence of the child itself, but not averring the discretionary capacity of the child, was *held* bad on demurrer. "A child between seven and fourteen years of age is *prima facie* incapable of exercising judgment and discretion." *Pratt Coal & Iron Co.* v. *Brawley*, 3 So. Rep. 555 (Ala.).

INSANITY — BURDEN OF PROOF. — Indictment for rape. Defence, insanity. *Held*, that "a defendant who relies upon insanity as an excuse for crime must prove the fact by a preponderance of evidence." *Coates* v. *State*, 7 S. W. Rep. 304 (Ark.).

The case is decided on the principle of *stare decisis*, following *Casat* v. *State*, 40 Ark. 511. Compare *Guiteau's Case*, 10 Fed. Rep. 161, which holds that where a defendant in a criminal action has overcome the presumption of sanity by introducing evidence tending to show his insanity, the burden is then cast upon the government to establish his sanity beyond a reasonable doubt. The burden of introducing evidence is on the defendant, the burden of proof, on the government.

INSURANCE — CONDITION AGAINST REINSURANCE. — Plaintiff insured with defendant under a condition against further insurance. He then insured in another company, with a condition against prior insurance. *Held*, that the plaintiff could not set up the voidability of the second insurance, in order to defeat the defence of breach of condition. *American Ins. Co.* v. *Replogel*, 15 N. E. Rep. 810 (Ind.).

Cases *pro* and *con* are collected.

INTEREST — LIQUIDATED ACCOUNT — STATEMENT RENDERED. — Where an account is not payable by contract at any particular time, the rendering of an account, without objection being made in a reasonable time, is equivalent to a demand of payment, and renders it an account stated. Interest is allowable as a matter of law from the time it thus becomes a liquidated claim. *Henderson Cotton M'f'g Co.* v. *Lowell Machine Shops*, 7 S. W. Rep. 142 (Ky.).

LANDLORD AND TENANT — DEFECTIVE PREMISES — LIABILITY TO THIRD PERSON. — Plaintiff, while walking on the sidewalk in front of premises owned by defendants, but which were at the time leased to other parties, without any covenants by defendants to keep same in repair, was injured by stepping into a coal-hole, the cover of which was insufficiently secured. *Held*, that, in the absence of proof that the defect complained of existed at the time the premises were leased, plaintiff could not recover. *Johnson* v. *McMillan*, 36 N. W. Rep. 803 (Mich.).

LARCENY — NOTES OF TESTIMONY. — Phonographic notes of testimony taken at a trial are personal property, subject to larceny. They do not come within the exception of title-deeds and choses in action. *Territory* v. *McGrath*, 17 Pac. R. 116 (Utah).

LEASE — BREACH OF COVENANT TO INSURE — RELIEF IN EQUITY. — A lessee agreed to insure in a certain form, but accidentally the insurance was taken in a different form. He was willing to correct the mistake. *Held*, to be a case where equity will relieve from forfeiture for breach of condition. The English rule that equity will not grant relief from forfeitures for breach of condition to insure, does not apply to those cases where the failure is due to accident or mistake. *Mactier* v. *Osborne*, 15 N. E. Rep. 64 (Mass.).

The court even show a disposition to treat the covenant to insure like a covenant to pay rent, where equity will relieve although the breach was wilful, if the lessor can be put in the same position as if the breach had not occurred. It may be doubted if that is strictly possible in the case of a covenant to insure.

MANDAMUS — GOVERNOR — MINISTERIAL DUTIES. — Proceedings in mandamus to compel the Governor to declare the county seat of Grant County, as provided by statute. *Held* (1), in all purely ministerial matters, the executive officers of the State are controlled by the judiciary; (2), the judiciary decides what acts and duties are ministerial, and what ones are discretionary with the Governor. *Semble*, the courts have the right to issue a subpœna against the Governor. *Martin* v. *Ingham*, 17 Pac. R. 162 (Kan.).

MARRIAGE — LIVING APART — LIABILITY OF HUSBAND FOR NECESSARIES OF WIFE. — Where a husband has turned his wife out of doors on account of adultery committed by his connivance, he is liable for necessaries subsequently supplied to her. *Wilson* v. *Glossop*, 20 Q. B. D. 354; s. c. 37 Alb. L. Jour. 273 (Eng.).

NEGLIGENCE — INJURY BY SERVANT OF CONTRACTOR TO SERVANT OF ANOTHER CONTRACTOR UNDER SAME EMPLOYER. — Two contractors, A and B, were employed on the same piece of work, B's part of the work being dangerous to A's servants near by. One of A's servants working in the place appointed by A was injured by the negligence of the servants of B. *Held*, that he could recover from B. The maxim "*Volenti non fit injuria*" does not apply. *Thrussell* v. *Handyside*, 20 Q. B. D.; s. c. 27 Alb. L. Jour. 274 (Eng.).

The rule stated in *Heaven* v. *Pender*, 11 Q. B. D., at 509, applies to this case.

NUISANCE — CHURCH-BELLS. — The plaintiff, by reason of a sunstroke, was in such a condition as to be thrown into convulsions by the ringing of a church-bell opposite his house. The pastor of the church, although requested not to do so, ordered the bell to be rung, much to the plaintiff's injury. There was no claim of express malice; but the pastor testified that he probably would not have stopped the bell even if he knew that the noise would kill the plaintiff. *Held*, that there was no ground of action against the pastor, on the familiar principle that one cannot complain of another's use of his own property without malice in a way not calculated to annoy persons in an ordinary condition. *Rogers* v. *Elliott*, 15 N. E. Rep. 768 (Mass.).

Quære, whether malice would have rendered the pastor's conduct actionable?

PRINCIPAL AND SURETY — RELEASE OF PRINCIPAL — EFFECT ON INDEMNIFIED SURETY. — C for whom defendant had become surety on a note in favor

of plaintiff, indemnified defendant by giving him a chattel mortgage on certain property. Plaintiff then, without consideration, released C from liability on the note. Afterwards, defendant sold his security without consent of plaintiff. *Held*, in an action on the note, that, notwithstanding the release of the principal debtor, the defendant, having been indemnified to the full amount of the note, was liable. *Jones* v. *Ward*, 36 N. W. Rep. (Wis.).

PROMISSORY NOTE — FRAUDULENT — PURCHASER FOR VALUE. — Where a note procured by fraud has been purchased before maturity, in good faith, without notice of such fraud, at a discount, the purchaser may recover the full amount of the note against the maker. — *Williams* v. *Huntington*, 16 Wash. L. Rep. 233 (Md.).

The decision repudiates the rule laid down in 1 Dan. Neg. Inst., sec. 758, that the purchaser can only recover the amount paid for the note. The case also decides that the purchase of a note at a heavy discount, and the existence of circumstances calculated to excite suspicion, do not of themselves show want of good faith in the purchaser; actual bad faith must be proved.

STATUTE OF FRAUDS — SALE OF LAND — CONTINUING POSSESSION. — Where, after a sale of land, the vendee orally agrees for a valuable consideration to allow the vendor to retain possession of the land as if no sale had been made, and to release all his title, *held*, that the vendor's possession subsequent to the agreement is not simply a continuance of his prior possession, but must be referred to the contract, and takes the oral agreement out of the operation of the Statute of Frauds. *Simmons* v. *Headlee*, 7 S. W. Rep. 20 (Mo.).

STATUTE OF FRAUDS — SALE OF LAND — JOINT POSSESSION OF GRANTOR AND GRANTEE. — The plaintiff having made an oral contract with the defendant for the conveyance of land, paid the purchase-money, and lived on the land together with the defendant. *Held*, that possession by the plaintiff which is not exclusive is not sufficient performance under the contract to entitle him to a decree of conveyance. *Gallagher* v. *Gallagher*, 5 S. E. R. 297 (W. Va.); see, also, *Pitt* v. *Moore*, 5 S. E. R. 389 (N. C.).

STATUTE OF LIMITATIONS — CONCEALMENT OF A WILL. — A, interested in the non-production of a will, fraudulently concealed it. *Held*, that the Statute of Limitations did not begin to run as to probating the will until after the discovery of the will, provided reasonable diligence was used in its discovery. *Appeal of Drake*, 17 Atl. Rep. 790 (Me.).

That fraudulent concealment of a tort is not a good replication to a plea of the Statute of Limitations, see Langdell's Summary of Equity Pleading (2d ed.), 128.

SUBROGATION — VOLUNTARY PAYMENT OF DEBT. — The town of Middleport, in pursuance of a statute of Illinois, voted an appropriation to a railroad company, and to raise the money issued bonds payable to bearer, which were delivered to the company, and purchased from it by the plaintiff. It turned out that the bonds were void. The plaintiff then claimed to be subrogated to any rights the company might have to enforce payment of the appropriation, on the ground that the purchase of the bonds operated as a payment of a debt due the company from the town. *Held*, that the purchase had no effect on the debt. The plaintiff bought the bonds because of the discount and interest, not to extinguish a debt. Besides, even if there was a payment of the debt, it was purely voluntary, while a person seeking subrogation must have paid the debt under some necessity. *Ætna Life Ins. Co.* v. *Middleport*, 8 Sup. Ct. Rep. 625.

TERM OF INJUNCTION — EFFECT OF APPEAL. — Where an injunction is by its terms limited to remain in force "only until the hearing" of a case, it was *held* that the injunction is *ipso facto* dissolved by a judgment rendered in the case, and is not continued in force by the taking of an appeal. *Fort Worth St. Ry. Co.* v. *Rosedale St. Ry. Co.*, 7 S. W. Rep. 381 (Tex.).

TRUST — GROUNDS FOR REMOVAL OF TRUSTEE. — Under the terms of the will creating the trust, the trustees were to pay to the plaintiff, in the exercise of their discretion, such portion of the income, "or no portion at all thereof, as they shall from time to time think fitting and proper." A state of hostility, attributable in part to the fault of the trustee, arose between the plaintiff and a trustee. No misconduct in the performance of the trust was shown. *Held*, the court will remove the trustee, for the removal appears essential to the interests of the *cestui*. *Wilson* v. *Wilson*, 14 N. E. Rep. 521 (Mass.).